IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 649 of 1985

HONOURABLE MR.JUSTICE KS JHAVERI

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MOHAMMADBHAI ISMAILBHAI SHAIKH & 1 - Appellant(s)
Versus
SUMERSINH NAVALSISNH DECD THROUGH THE LRS & 3 - Defendant(s)

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Appearance :
MR RAJNI H MEHTA for Appellant(s) : 1 - 2.
None for Defendant(s) : 1 - 2.
NOTICE NOT RECD BACK for Defendant(s) : 3,
MR NILESH R PARMAR for Defendant(s) : 3,
MR SUNIL B PARIKH for Defendant(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 24/08/2006

ORAL JUDGMENT

1. This appeal is directed against the judgement and award dated 17th August 1983 passed by Motor Accident Claims Tribunal No.2 (Aux.), Ahmedabad in MACP No.92 of 1982 whereby the Tribunal has awarded a sum of Rs.55000/- along with proportionate costs and interest at the rate of 6% per annum.

2. The case of the claimant was that one Bhabhutsinh expired in a vehicular accident that occurred on 21st December 1981 in between 3 and 3.30 pm on a public road connecting H.B. Kapadia High School towards Madhupura Chowk in the city of Ahmedabad. The legal heirs of said Bhabhutsinh has filed the aforesaid claim petition which was partly allowed as stated hereinabove.

3. Learned Advocate for the appellant submitted that the Tribunal has awarded compensation at higher rate under various heads. He further submitted that the Tribunal ought to have deducted the dependency benefit from the income of the deceased.

4. As a result of hearing and perusal of the record, it is found that the applicant no.3 was awarded Rs.10000/- father was awarded Rs.15000/- and mother was awarded Rs.3000/-In the case of Somabhai Vajabhai V. Babubhai, reported in 1982(1) GLR 785 it is held that the deceased who was unmarried would have diverted two-thirds of his income for the maintenance of the family in course of time and one-third for the maintenance of his parents. In the present case the Tribunal has not considered this aspect of the matter. Therefore taking one third of the total award, the Insurance Company will be entitled to refund of Rs.30000/-.

5. In the premises aforesaid, it is held that the claimants would be entitled to a sum of Rs.15000/- and the remaining

amount of Rs.30000/- will be refunded to the Insurance Company. The interest awarded by the Tribunal shall remain the same. The award of the Tribunal is modified to the aforesaid extent. The appeal is allowed to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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